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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,519	01/28/2002	Brian Purser	1384/6	5395

7590 07/31/2003
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Charlotte, NC 28282

EXAMINER

PRONE, JASON D

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 07/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/058,519

Applicant(s)

PURSER, BRIAN

Examiner

Jason Prone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other: .

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the hydraulic compressor must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 9 recites the limitation "the same position" on lines 3-4. There is insufficient antecedent basis for this limitation in the claim. It is unclear which position is to be considered the same.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-8 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Pardoe.

Pardoe discloses the same invention including a first member (10) having a jaw on a first end (18b) and a mounting attachment on a second end (44), that the first jaw includes an article-supporting surface (28), a second member (16) pivotally mounted for movement about a first pivot axis (14), that the second member includes a second jaw (20) having an article-engaging surface (22) cooperable with the article-supporting surface and defining an article receiving opening in-between (Fig. 1), that the second jaw is movable about the first pivot axis relative to the first jaw between an article receiving position and an article breaking position (Fig. 1), that the article-supporting surface is inclined relative to the first pivot axis (28) so that when the jaws move to the breaking position a work piece located between the jaws will move along the article-supporting surface towards the pivot axis (Fig. 4), a power means (Fig. 1) comprising a piston (40) and cylinder assembly (34), that the piston and cylinder assembly is hydraulically driven (Fig. 1) by a hydraulic compressor of a vehicle (54), that the article-engaging surface includes a blade (22), that the apparatus is adapted to break railways (Fig. 4), that the length of the jaws is less than the height of the work piece whereby the article-engaging surface engages less than the entire height of the work piece (Fig. 4), that the first jaw includes a second article-supporting surface forward of the article-supporting surface positioned at an oblique angle (18a), that the mounting attachment includes an attachment pivot mounting (58) having an axis of rotation perpendicular to

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the axis of rotation of the first pivot axis (Fig. 4), and a vehicle having an articulating arm to which the apparatus is attached (52).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pardoe in view of Detriche. Pardoe discloses the invention but fails to disclose that the axis of rotation of the attachment pivot is aligned with the axis of rotation of the perpendicular first pivot axis of the second member for maintaining the jaws in the same position. Detriche teaches an apparatus with the axis of rotation of the attachment pivot (F) that is aligned with the axis of rotation of the perpendicular first pivot axis of the second member for maintaining the jaws in the same position (8). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Pardoe with an axis of rotation of the attachment pivot (F) that is aligned with an axis of rotation of the perpendicular first pivot axis, as taught by Detriche, to allow for a better knowledge of where the jaws are when operating the apparatus.

9. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pardoe in view of Detriche as applied to claims 1-9 and 14-16 above. In light of the apparatus rejection, the method is inherent.

Conclusion

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10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gross, LaBounty, Hippely et al., Johnson, Balyasny, Kunzman et al., Pemberton, Tagawa, Morikawa et al. ('892), Morikawa et al. ('146), Ostermeyer, LaBounty et al., and Lee.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is 703-605-4287. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

JP
July 16, 2003


Allan N. Shoap
Supervisory Patent Examiner
Group 3700